

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

APR 5 2002

2.A

WAYNE BERRY,)	CIVIL NO. CV01-00446
)	SPK LEK
Plaintiff,)	(Copyright)
)	
vs.)	
)	
FLEMING COMPANIES, INC.,)	
aka FLEMING FOODS, INC.,)	
aka FLEMING, DOE)	
INDIVIDUALS 1-50 AND DOE)	
PARTNERSHIPS,)	
CORPORATIONS AND OTHER)	
ENTITIES 1-20 S 1-50,)	
)	
Defendants.)	

DEPOSITION OF MARK DILLON

Taken on behalf of the Plaintiff pursuant to
Notice, on Monday, March 25, 2002, commencing at
9:00 a.m., at the Law Offices of Lynch Ichida
Thompson Kim & Hirota, 1132 Bishop Street, Suite
1405, Honolulu, Hawaii 96813.

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiff Wayne Berry:</p> <p>3 TIMOTHY J. HOGAN, ESQ.</p> <p>4 Lynch Ichida Thompson Kim & Hirota</p> <p>5 1132 Bishop Street, Suite 1405</p> <p>6 Honolulu, Hawaii 96813</p> <p>7 (808) 528-0100</p> <p>8 For Defendant Fleming Companies, Inc., aka</p> <p>9 Fleming Foods, Inc., aka Fleming:</p> <p>10 LEX R. SMITH, ESQ.</p> <p>11 Kobayashi Sugita & Goda</p> <p>12 First Hawaiian Center</p> <p>13 999 Bishop Street, Suite 2600</p> <p>14 Honolulu, Hawaii 96813</p> <p>15 (808) 539-8700</p> <p>16 For Defendant Hawaiian Express Service,</p> <p>17 Inc.:</p> <p>18 ROY J. TJOE, ESQ.</p> <p>19 Goodwill Anderson Quinn & Stifel</p> <p>20 Alii Place, Suite 1800</p> <p>21 1099 Alakea Street</p> <p>22 Honolulu, Hawaii 96813</p> <p>23 (808) 547-5600</p> <p>24 Also Present: Wayne Berry</p> <p>25 REPORTED BY: Laura Savo, CSR No. 347</p> <p>Notary Public, State of Hawaii</p> <p>-o0o-</p>	<p>Page 4</p> <p>INDEX (Cont'd)</p> <p>PAGE</p> <p>Plaintiff's Exhibit 11 108</p> <p>(2-page memo addressed to Wayne Berry from</p> <p>Ralph Stussi, dated 11-24-99)</p> <p>Plaintiff's Exhibit 12 110</p> <p>(2-page computer screen print displaying</p> <p>opening menu for the database)</p> <p>Plaintiff's Exhibit 13 114</p> <p>(2-page computer screen print displaying</p> <p>data)</p> <p>Plaintiff's Exhibit 14 115</p> <p>(2-page computer screen print displaying</p> <p>master load plan for API)</p> <p>Plaintiff's Exhibit 15 116</p> <p>(2-page computer screen print displaying</p> <p>the company name screen)</p> <p>Plaintiff's Exhibit 16 117</p> <p>(2-page computer screen print displaying</p> <p>pop-up screen for FCS Logistics)</p> <p>Plaintiff's Exhibit 17 119</p> <p>(1-page computer screen print displaying</p> <p>for costing services)</p> <p>Plaintiff's Exhibit 18 124</p> <p>(1-page computer screen print displaying</p> <p>delivery costing)</p> <p>Plaintiff's Exhibit 19 140</p> <p>(2-page computer screen print displaying</p> <p>Functional State of Logistics Database)</p> <p>Plaintiff's Exhibit 20 170</p> <p>(2-page document entitled "Fleming Asset</p> <p>Purchase from API")</p> <p>Plaintiff's Exhibit 21 186</p> <p>(2-page letter addressed to Steve</p> <p>Christensen from Pete Schaul, dated 6-11-99)</p> <p>UNANSWERED QUESTIONS AS REQUESTED BY COUNSEL:</p>
<p>Page 3</p> <p>INDEX</p> <p>EXAMINATION: PAGE</p> <p>BY MR. HOGAN 5</p> <p>Lunch Recess 119</p> <p>EXHIBITS FOR IDENTIFICATION:</p> <p>Plaintiff's Exhibit 1 28</p> <p>(9-page document entitled "Declaration of</p> <p>Mark Dillon")</p> <p>Plaintiff's Exhibit 2 48</p> <p>(3-page document entitled "Declaration of</p> <p>Mark Dillon")</p> <p>Plaintiff's Exhibit 3 54</p> <p>(1-page document containing logistics data,</p> <p>dated 10-7-99)</p> <p>Plaintiff's Exhibit 4 57</p> <p>(21-page document entitled "Exhibit 8.txt")</p> <p>Plaintiff's Exhibit 5 57</p> <p>(21-page document entitled</p> <p>"ProgrammingLog.txt")</p> <p>Plaintiff's Exhibit 6 57</p> <p>(9-page document entitled "Exhibit 2.txt")</p> <p>Plaintiff's Exhibit 7 75</p> <p>(2-page email addressed to</p> <p>MarkD@FlemingLogistics.com from Badten,</p> <p>dated 11-19-99)</p> <p>Plaintiff's Exhibit 8 101</p> <p>(1-page letter addressed to Mark S. Hansen</p> <p>from Wayne Berry, dated 11-27-00)</p> <p>Plaintiff's Exhibit 9 105</p> <p>(1-page memo addressed to Wayne Berry from</p> <p>Ralph Stussi, dated 10-28-99)</p> <p>Plaintiff's Exhibit 10 107</p> <p>(5-page document entitled "End-User</p>	<p>Page 5</p> <p>(Pursuant to Rule 14 of the Rules Governing Court</p> <p>Reporting in Hawaii, the reporter's disclosure</p> <p>was made and is attached hereto.)</p> <p>MARK DILLON</p> <p>Having been called as a witness and being first</p> <p>duly sworn to tell the truth, the whole truth and</p> <p>nothing but the truth, was examined and testified</p> <p>as follows:</p> <p>EXAMINATION</p> <p>BY MR. HOGAN:</p> <p>Q Good morning, Mr. Dillon. Would you,</p> <p>please, state your full name and spell it for the</p> <p>court reporter.</p> <p>A My name is Mark Robert Dillon, M-a-r-k</p> <p>R-o-b-e-r-t D-i-l-l-o-n.</p> <p>Q Have you been known by any other names</p> <p>other than --</p> <p>A No.</p> <p>Q -- that?</p> <p>Have you ever had your deposition taken</p> <p>before?</p> <p>A No.</p> <p>Q Have you ever attended a deposition?</p> <p>A No.</p> <p>Q Have you ever testified in court?</p>

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1 reconstructed for myself, for my own purposes,
2 just to help me remember the kind of chain of
3 events at certain times just so I could represent
4 what I understood to be the facts at that time.

5 Q Why did you create that, whatever it
6 is, the document you're talking about?

7 A Well, I think it had a number of
8 purposes. I created it just really to clarify,
9 to gather together any information I had on what
10 was going on at certain points of time that were
11 at issue, you know, during which there were
12 developments that were --

13 MR. SMITH: Is this the memo you wrote
14 to me, or is this something different you're
15 describing now?

16 THE WITNESS: You've seen it, yeah.
17 You saw it.

18 MR. SMITH: This is the one you sent to
19 me that was on the first CD I got?

20 THE WITNESS: Yes.

21 MR. SMITH: Okay. So this is
22 something -- Well, you can tell him what the
23 purpose was, but it sure seemed like it was
24 prepared for me. It was addressed to me.

25 THE WITNESS: Yes. Well, it was

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1 addressed to him, but I explained to him my
2 recollections about all the things that were --
3 all the kind of events, like in 2000, Mr. Perez
4 says, "In 2000, the database was down," what led
5 us to reply as FlemingPO.exe and how we did that,
6 those kinds of things. And any emails, I made
7 references to any emails or documentation I had
8 just so I would have a way to substantiate my
9 recollection, and I gave a copy of that to
10 mister --

11 MR. SMITH: Yeah, I would characterize
12 it, actually, as sort of a memo from Mark to me
13 explaining the things, what the things were and
14 where they fit into the time line of the rest of
15 the information on the CD, and that was actually
16 one of the reasons we had a delay in producing
17 the CD to you because I told him that we weren't
18 supposed to produce that memo to your side.

19 MR. HOGAN: I remember you mentioned
20 that to me.

21 Q Did you review that prior to coming in
22 here today?

23 A Yes, I did just to refresh my memory.

24 Q How many times have you met Mr. Smith?

25 Let's talk about the number of times.

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1 A Twice.

2 Q Okay. When was the first time?

3 A Friday.

4 Q Friday. I presume you've spoken to him
5 on the phone or had other contacts with him?

6 A Yes.

7 Q We don't want to know what you were
8 talking about. So you met with him Friday?

9 A Yes.

10 Q When was the other time?

11 A Just this morning.

12 Q How long did you meet with him on
13 Friday?

14 A Forty-five minutes, something like
15 that.

16 Q Was anyone else in the room with you?

17 A No.

18 Q Did you discuss your testimony with
19 Ralph Stussi? That's S-t-u-s-s-i.

20 A No.

21 Q When was the last time you spoke with
22 Mr. Stussi?

23 A I saw him Friday, actually.

24 Q You saw him Friday?

25 A Yeah.

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1 Q Is Mr. Stussi still employed at Fleming
2 Kapolei?

3 A I'm not sure.

4 Q Why do you say that?

5 MR. SMITH: Well, I'll just tell you.
6 The answer's no.

7 BY MR. HOGAN:

8 Q All right. Who's the boss out there?

9 A The boss would be Brian Christensen.

10 Q Do you have any information regarding
11 why Mr. Stussi's no longer in Kapolei?

12 A No, I don't.

13 Q Have you heard any speculation from any
14 employees --

15 A No, I haven't.

16 Q -- at Fleming?

17 Did you discuss that with Theresa Noa?

18 A No, I did not.

19 Q Anyone else at Fleming?

20 A No, I did not.

21 Q Do you know Brian Christensen?

22 A Not very well.

23 Q Is he related, to your knowledge, to
24 Steve Christensen?

25 A They're not related.

March 25, 2002

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1 Wednesday instead. Frankly, I think if I told
2 him, "You have no choice. You gotta be here
3 tomorrow," I can produce him tomorrow. It's up
4 to you whether you're really willing to grant the
5 courtesy or not.

6 MR. HOGAN: Why don't we do this. Why
7 let you go back, contact him. I don't think he's
8 going to be that long. It may not be a long day
9 and get it over with. Let's talk before the end
10 of the day. All right?

11 MR. SMITH: Sure.

12 MR. HOGAN: Let's leave him on for
13 tomorrow, but I promise to talk to you before
14 5:00 o'clock.

15 MR. SMITH: Okay.

16 MR. HOGAN: And then we can go from
17 there. I'd rather get it over with.

18 MR. SMITH: I'll give you a call.

19 MR. HOGAN: Fair enough. Thank you.
20 (Whereupon the proceedings
21 were adjourned at 3:11 p.m.)
22
23
24
25

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1 I, the undersigned, MARK DILLON, being first
2 duly sworn say:

3 I have read and/or had translated the
4 foregoing deposition and know the contents
5 thereof, and I certify that the same is true of
6 my own knowledge, except as to those matters
7 which are therein stated upon my information and
8 belief, and as to those matters, I believe it to
9 be true.

10 I declare under penalty of perjury that the
11 foregoing is true and correct.
12

13 Executed on _____,
14 2002, at _____,
15 _____.

16
17 MARK DILLON
18
19
20
21
22
23
24
25

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CERTIFICATE

1 STATE OF HAWAII }
2 } ss.
3

4 I, LAURA SAVO, a Notary Public in and
5 for the State of Hawaii, do hereby certify:

6 That prior to being examined, the
7 witness herein, Mark Dillon, was sworn by me to
8 testify to the truth, the whole truth and nothing
9 but the truth;

10 That the foregoing deposition was taken
11 down by me in machine shorthand at the time and
12 place herein stated, and was thereafter reduced
13 to typewriting under my supervision;

14 That the foregoing is a full, true
15 and correct transcript of said deposition;

16 That after said deposition was reduced
17 to typewriting, the witness, in accordance with
18 Rule 30(e) of the Hawaii Rules of Civil
19 Procedure, was duly informed of the right to make
20 such corrections as might be necessary to render
21 the same true and correct.

22 I further certify that I am not of
23 counsel or attorney for any of the parties to
24 this case, nor in any way interested in the
25 outcome hereof, and that I am not related to any
of the parties hereto.

Witness my hand and seal this 2nd day
of April, 2002.

LAURA SAVO, RPR, CSR NO. 347
Notary Public, State of Hawaii
My Commission Expires: 11/28/2005